September Lunch Workshop

How to Write Bulletproof Documentation:
HR, Supervisor & Manager Training

Thorough and effective documentation protects employers

Tuesday, September 11, 2012
Noon – 3:00 PM
The Drake
Next to Walgreens on the corner of 81 & 212

To RSVP for this seminar please visit, http://nesd.shrm.org
Under the “Events and Education” tab
Please RSVP no later than September 7, 2012

What You’ll Learn: You hear it from your legal counsel all the time: “document, document, and document, poor documentation can cause as much liability as having no documentation at all”.

- Review the seven steps for writing bulletproof documentation.
- Learn the words and phrases to avoid.
- See how to document an employee’s explanation.
- Examples of documentation disasters that create employer liability.
- Find out how to document your expectations, problematic conduct & consequences.
- How to effectively deliver.
- Find out how to write documentation that is fair and consistent.

About the Speaker: Patricia Dougherty has greater than 25 years of successful leadership experience and is Senior Vice President & Principal for The Weston Group. Dougherty is a certified SPHR, has a background in executive human resource management and is also a licensed Registered Nurse. Dougherty also served as an Officer in the United States Army Nurse Corps for 10 years. Dougherty travels and speaks nationally to assist small to medium size organizations with organizational effectiveness involving their most important asset – their employees.

COST
$10.00 TO NESD SHRM PLUS MEMBERS
$15.00 TO NESD SHRM MEMBERS
$25.00 TO NON NESD SHRM MEMBERS
From the President

~ Laurie Gates

The calendar says September so we have to be ready for fall, but it seems like it should only be June or July. Where has the summer gone? The local children have returned to school, fall sports are starting back up, and we know the raking of leaves is not too far off. The joys of the fall season!

On the second Tuesday of each month you can catch your breath from these activities at our luncheon programs at the Drake. Your chapter has a FULL program schedule with the goal of presenting HRCI re-certification credits for each session. We will also be packing bags for the PACH project on 10/10/12 (please contact me if you are interested in helping with PACH!).

While the fall is busy, we also have a major event coming next spring. The Northeast South Dakota SHRM chapter will be hosting the SD State SHRM Conference at the Watertown Event Center on May 1-3, 2013 (please note this is a revised date). More information and updates will follow in the months ahead.

Please spread the word about our community involvement activities, monthly luncheon meetings, support of the 2013 SD State Conference, and invite a colleague to attend a program or event with you. All are welcome and appreciated!

Social Media: Harmless or Damaging to employers?

~Employment Law Letter

Seen any viral videos lately? Maybe a more pertinent question is: Fired anyone over a viral video lately? Videos and other social media posts run the gamut from cute kittens to dancing wedding parties. Sometimes, though, they delve into more serious subjects and become statements on political and social issues — issues that can embarrass an employer.

With all kinds of posts going viral every day, employers struggle with how to handle employee use of social media. The National Labor Relations Board (NLRB) has weighed in on several cases in which employees have used social media to criticize their employers. Depending on the specifics of the posts, their views can be concerted activity protected by the National Labor Relations Act (NLRA).

What if it’s not a low- or mid-level employee but instead a company executive using social media? And what if the posts aren’t even related to the employer? Is an employer on solid legal ground terminating a high-level employee speaking out on social or political issues? Or does the employer face potential legal claims?

Chick-fil-A controversy - With the recent controversy over statements against gay marriage by Dan T. Cathy, the president and chief operating officer of the Chick-fil-A fast-food chain, the Internet was buzzing. And it looks like at least one executive who took his stance to YouTube was fired over his video showing his trip through a Chick-fil-A drive-thru.

Adam Smith, who was identified in media reports as the CFO for a medical device company based in Tucson, Arizona, videoed himself ordering a free cup of water at a Chick-fil-A drive-thru. When he got to the window, he had an exchange with the drive-thru employee in which he explained that he was ordering the water as a protest. (The free water protest was a move that also had its start in social media. The act was suggested to those opposing Cathy as a way to deprive the company of a little profit that then wouldn’t be available for Cathy to donate to organizations his foes consider hate groups.)

Some reports accused Smith of bullying the employee who is shown in the video explaining that she was staying neutral on the issue and that she didn’t think her personal views belonged in the workplace. He has since apologized to the employee on Inside Edition.

Media reports quote a statement from Smith’s company saying in part, “We respect the right of our employees and all Americans to hold and express their personal opinions, however, we also expect our company officers to behave in a manner commensurate with their position and in a respectful fashion that conveys these values of civility with others.”

Risky firing? -In most cases, employers are within the law to fire at-will employees in cases such as the Chick-fil-A protest, although the move may carry some risk. “While government employees have the right to speak out on matters of public concern, at-will employees of private businesses have no such rights and can be fired for any reason, including their political statements on social media or elsewhere,” says Dinita L. James, a partner at Ford & Harrison LLP in Phoenix, Arizona.
“The risk is that the employee will get a good lawyer and will be able to put together a claim that the firing was instead because of some kind of protected status, such as race, sex, age, or religion,” James says.

But good documentation can protect the employer. “Clear, contemporaneous documentation of the reason for the firing will be crucial evidence in the employer’s defense,” James says. Molly M. DiBianca, an attorney with Young Conaway Stargatt & Taylor, LLP in Wilmington, Delaware, agrees that “it’s always wise to document the reason for any employment-related decision, particularly for terminations and discipline.” She says her rule of thumb is “to articulate how the employee’s off-duty conduct (whether online or not) affects or will potentially affect the employer’s business or operations.”

In the case of the Chick-fil-A video, the fired employee was a company officer. “The company could have legitimate concerns about how his comments will be interpreted as the comments of his employer,” DiBianca says. “Any time you are dealing with a high-level or public-facing employee, there are additional issues that are raised when the employee speaks out in public.”

Social media policy -With social media making it possible for an unknown to become famous within hours of an Internet posting, employers are adopting social media policies for employees to follow. The NLRB, though, has made it clear that such policies need to be crafted so as not to restrict employees’ rights under the NLRA, such as the right to discuss wages and working conditions with coworkers.

Policy or no policy, employers have to carefully consider how to handle situations based on the facts of each case. “Every employment decision should be considered on a case-by-case basis, but social media policies can serve as a deterrent — or at least prevent an employee who is about to be disciplined for his online posting from claiming surprise,” DiBianca says.

Test Your Knowledge on the ADA

Question 1: Your accounting department is one of the most productive and well-run groups in your business. The department manager is demanding, but fair. So when a recently hired auditor wasn’t able to keep up, he adjusted her workload temporarily. Now, she says her attention deficit disorder prevents her from maintaining the same pace as the other auditors, but that the accommodation the manager made is working out fine. Assuming ADD is a disability, are you stuck with the modified workload?

☐ 1) Yes. The department is still plenty productive even with the modified workload so it’s not an undue hardship, and you have to accommodate her disability.
☐ 2) No. Everyone has to work at the same pace, with or without disability.
☐ 3) Maybe -- it depends on whether the manager is too demanding across the board.

Question 2: Okay, you hired a lemon. It happens. He makes more mistakes than he does progress, but that's only when he shows up. He's missed more than 5 days in his first 6 weeks of employment. To top it off, he left work early 3 days ago, feeling sick. He called his supervisor the next day saying he had the flu and would be back in 5 days. But those 5 days (added to the other 5) put him in violation of your attendance policy, so you fire him. He says you unlawfully "regarded" him as having a disability in violation of the ADA. Does he have a good case?

☐ 1) Yes. You took an adverse action based on an impairment -- that's all he needs for a regarded as claim.
☐ 2) No. An impairment can't be transitory and minor in a regarded as claim -- this was 5 days and most people who have flu recover fully.
☐ 3) Doesn't matter -- it's cheaper to litigate than to keep him as an employee.

Answers:

1. Answer: 2. Employers don't have to lower production standards to accommodate an employee's disability. They do have to provide an accommodation that will enable the employee to achieve the standard, but if nothing works, the standard doesn't have to be adjusted.

2. Answer: 2. Under the regarded as definition, an impairment can't be transitory and minor. EEOC regulations define "transitory" as lasting or expected to last 6 months or less. But be aware -- the 6-monthtime limit applies only to the regarded
as definition. Under the other definitions (actual disability and record of disability) there is no minimum time -- if an impairment is severe enough to substantially limit a major life activity, it doesn't need to last 6 months.

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**SHRM Membership Offer**

We are excited to announce that we are continuing to offer a $15 discount to new, first-time SHRM members recruited through our chapters and state councils. However, the promotion code that was used previously (CHNCD) has been replaced by promotion code 0118. For new SHRM members who join online at www.shrm.org, the 0118 discount code automatically populates the form when they select their chapter from the drop down menu. For chapters or states using a paper process, the SHRM membership application in the Volunteer Leaders Resource Center already includes the 0118 promotion code, and we encourage you to use this version going forward.

Join SHRM National today @

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**Thought for the Month:**

Really great people make you feel that you, too, can become great.

~ Mark Twain

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**Upcoming Events**

Oct. 9 - Domestic Violence Awareness
Watertown Police Dept.

Oct. 10 – NESD SHRM Serves PACH

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**SHRM FOUNDATION NEWS:**

SHRM Foundation News: Generating Research-Based Knowledge

The SHRM Foundation is the leading funder of HR research grants--providing funding for high-impact, original HR research that advances the knowledge base of the profession. In the past 12 years, the SHRM Foundation has funded more than $2.8 million in research grants for over 105 research projects. Topics for research include:

- Making virtual teams more effective.
- Increasing the success rate of new executives.
- Employee engagement in multinational corporations.
- Retention of an older workforce.
- Impact of HR practices on organizational social performance.

Much of your every day work is influenced by research, even if you have never read a research paper. The cumulative effect of multiple research studies is to discover and document what practices work best and under what conditions. In this way, research ultimately influences the practice of human resource management.

To learn more and to review the results of recently completed SHRM Foundation research, visit the foundation website (www.shrm.org/foundation/findings.asp).

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**NESP SHRM Communications Disclaimer:**

http://nesd.shrm.org
The August 2012 NESD SHRM Board meeting was held Wednesday, August 29th, 2012, at Past Times. The meeting was called to order by President Laurie Gates. Members present Sheila Mennenga, Leigh Kuecker, Amber Dahl, Tammy Davis, and Julie Plunkett. Motion was requested to approve the July 2012 Meeting Minutes with no corrections or additions. Motion so moved by Tammy Davis, seconded by Julie Plunkett. All Yea’s and no Nay’s. Motion carried.

Member Reports
Past President Report: Sheila Mennenga said that the sub-committees for the 2013 SD State Conference have been meeting over the summer, and that the entire committee will meet again in September. The group will most likely start meeting monthly now that the conference is getting closer. The 2013 SD State Conference will be held 5/1-5/3 at the Watertown Event Center.

President Elect Report: Julie Plunkett has a list of members who are interested in joining the 2013 NESD SHRM Board, and she will be working on getting that finalized before the Regional Leadership Conference in Pierre on 10/18-10/19.


Membership Report: In Paige’s absence, Laurie Gates reported that there are a few new members that will be joining the chapter in September. Members who join after 9/1 will have their memberships carry into 2013. We currently have 52 local members and 24 National members.

SHRM Foundation Representative Report: Amber Dahl reported that our Chapter received a $500 check from the Change for Charity event held in August. The Board will be sending $330 of the funds to the SHRM Foundation as budgeted for this year, and putting the balance of $170 into the SHRM Foundation account for part of the 2013 donation.


Government Affairs Representative Report: Traci Stein was unable to attend the meeting, but sent information about the Watertown Development Company ads placed in the Kenosha Wisconsin newspaper to recruit workers into our area.

Workforce Readiness Advocate Report: No report.

Certification Representative Report: Leigh Kuecker reported that the http://www.hrci.org/Blog website offers many good tips for those looking to become certified, or need to re-certify. There are sample quizzes, blogged archives, and tips on how to log your credits when recertifying. Applications for certification are accepted until October 5th for the winter exam, or Nov. 9th for late entries. The testing window is from December 1st to January 31st. Also, Leigh mentioned that on the US Wage & Hour site, http://www.dol.gov/whd/, there are several videos that can be accessed for free on various HR topics, such as determining exempt vs. non-exempt status, etc.

Co-Chairs of Programs Report: No Report. Programs have been scheduled for the rest of 2012. Please see program listing in the newsletter.

Secretary Report: No Report

New Business: Career Expo 9/24- The Board approved a $500 donation to the Career Expo to be held at the high school on 9/24. The Board had already included this expense in the 2012 budget. The funds go toward scholarships and expense for the Expo.

Old Business:
PACH 10/10 - The NESD SHRM Chapter will be packing bags for the PACH project on Wednesday, October 10th. Volunteers will be needed. Contact Laurie Gates for information.

**Pinnacle Project** - Laurie Gates will be submitting our Pinnacle Project report on the National Membership survey by 9/7/12.